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# Towards Post-Liberal Democracy in Latin America? A Conceptual Framework Applied to Bolivia

JONAS WOLFF\*

*Abstract.* Recent political changes across Latin America that challenge mainstream conceptions of liberal democracy have led to speculation about some kind of post-liberal democracy possibly emerging in the region. Up to now, however, there has been no systematic assessment of this proposition or any explicit conception of post-liberal democracy. This article fills this research gap by proposing a conceptual framework for analysing political change in the direction of post-liberal democracy, in Latin America and beyond, and probes the plausibility of this framework in a case study of Bolivia. It shows that the concept of post-liberal democracy helps us make sense of the contemporary transformation of Bolivian democracy and that it has comparative advantages over alternative conceptual frameworks such as radical populism and defective – that is, illiberal or delegative – democracy.

*Keywords:* democracy, liberalism, political transformation, constitutional change, Bolivia

## *Introduction*

Since the turn of the century, the spread of left and centre-left governments across Latin America and, in particular, a new wave of constitutional reforms have led scholars to speculate about the possible emergence of some kind of a post-liberal democracy in the region.<sup>1</sup> Most prominently, Benjamin Arditi observes an ‘experimentation with post-liberal formats of political

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<sup>1</sup> Detlef Nolte and Almut Schilling-Vacaflor (eds.), *New Constitutionalism in Latin America: Promises and Practices* (Farnham: Ashgate, 2012).

participation' among the new and heterogeneous Left.<sup>2</sup> Ardití identifies a series of post-liberal elements that do not replace the liberal state and electoral democracy but rather tend to transform liberal democratic polities by adding non-liberal forms of participation and citizenship.<sup>3</sup> Deepening Ardití's analysis with a view to Bolivia, Nancy Postero argues that the agenda of the Morales government is not only about moving towards post-neoliberalism, but also about transforming, or 'vernacularising', liberalism.<sup>4</sup> Comparing the socio-economic, political and cultural transformations in Bolivia, Ecuador and Venezuela, Arturo Escobar also finds traces of post-liberalism, as well as of post-developmentalism and post-capitalism, but concludes that, overall, contemporary political changes point towards alternative forms of modernisation, not alternatives to modernity.<sup>5</sup> Boaventura de Sousa Santos calls the emerging situation in these three countries 'demo-diversity', the result of an 'enrichment' of representative democracy with participatory and communitarian forms of democracy.<sup>6</sup>

Until recently, writings on post-liberal democracy have focused on the 'established liberal democracies' in Northern America and Western Europe and consisted mainly in normative sketches of what an 'improved' democracy could look like.<sup>7</sup> In contrast, Ardití is interested in the experimentation with post-liberal politics that is 'already happening' across Latin America, particularly in relation to forms such as *presupuesto participativo* (participatory budgeting), *municipios autónomos* (autonomous municipalities) and *usos y costumbres* (indigenous customs and practices).<sup>8</sup> In general, these post-liberal challenges to the current forms of democracy in Latin America have come

<sup>2</sup> Benjamin Ardití, 'Arguments about the Left Turns in Latin America: A Post-Liberal Politics?', *Latin American Research Review*, 43: 3 (2008), p. 67.

<sup>3</sup> Ardití, 'Arguments about the Left Turns', pp. 72–80.

<sup>4</sup> Nancy Postero, 'The Struggle to Create a Radical Democracy in Bolivia', *Latin American Research Review*, 45: Special Issue (2010), pp. 59–78. See also Santiago Anrí, 'Bolivia's MAS: Between Party and Movement', in Maxwell A. Cameron and Eric Hershberg (eds.), *Latin America's Left Turns: Politics, Policies, and Trajectories of Change* (Boulder, CO: Lynne Rienner, 2010), pp. 101–25.

<sup>5</sup> Arturo Escobar, 'Latin America at a Crossroads: Alternative Modernizations, Post-Liberalism, or Post-Development?', *Cultural Studies*, 24: 1 (2010), pp. 1–65.

<sup>6</sup> Boaventura de Sousa Santos, 'Enriquecer la democracia construyendo la plurinacionalidad', in Miriam Lang and Alejandra Santillana (eds.), *Democracia, participación y socialismo: Bolivia – Ecuador – Venezuela* (Quito: Fundación Rosa Luxemburg, 2010), pp. 30–1.

<sup>7</sup> Philippe C. Schmitter, 'A Sketch of What a "Post-Liberal" Democracy Might Look Like', unpubl. manuscript, European University Institute, 2006. According to Schmitter, the term can be attributed to C.B. MacPherson and his essay 'Post-Liberal Democracy?', in MacPherson, *Democratic Theory: Essays in Retrieval* (Oxford: Clarendon Press, 1973); see Philippe C. Schmitter, 'The Prospect of Post-Liberal Democracy', in Karl Hinrichs, Herbert Kitschelt and Helmut Wiesensthal (eds.), *Kontingenz und Krise: Institutionenpolitik in kapitalistischen und postsozialistischen Gesellschaften* (Frankfurt: Campus, 2000), p. 25 n. 1.

<sup>8</sup> Ardití, 'Arguments about the Left Turns', p. 74.

from below: from social movements, indigenous communities and local politics.<sup>9</sup> With new national governments promising and, indeed, initiating national 're-foundations' via constituent assemblies, these challenges have culminated in processes that aim to profoundly transform political regimes. Whether in the shape of 'participatory democracy', 'radical democracy' or 'radical populism', these challenges are widely seen as pointing towards a transformation of current modes of democracy into something less liberal and somehow differently democratic.<sup>10</sup> Contemporary Bolivia is a crucial case for this debate: prima facie, Bolivia is the Latin American country that most clearly combines continuity in terms of basic standards of representative democracy with substantial innovation in terms of deviations from mainstream notions of liberal democracy.<sup>11</sup> Whether the recent wave of leftist governments, and especially the new constitutions in Bolivia, Ecuador and Venezuela, have led to macro-political changes that indicate the emergence of post-liberal democracy at the state level is, however, still rather unclear.<sup>12</sup>

<sup>9</sup> See Sonia E. Alvarez, Evelina Dagnino and Arturo Escobar, 'Introduction: The Cultural and the Political in Latin American Social Movements', in Alvarez, Dagnino and Escobar (eds.), *Cultures of Politics/Politics of Cultures: Re-Visioning Latin American Social Movements* (Boulder, CO: Westview Press, 1998), pp. 1–29; Ardit, 'Arguments about the Left Turns'; Escobar, 'Latin America'; Boaventura de Sousa Santos (ed.), *Democratising Democracy: Beyond the Liberal Democratic Canon* (London: Verso, 2005); Donna Lee Van Cott, 'Latin America's Indigenous Peoples', *Journal of Democracy*, 18: 4 (2007), pp. 127–41; and *Radical Democracy in the Andes* (Cambridge: Cambridge University Press, 2008); and Deborah J. Yashar, *Contesting Citizenship in Latin America: The Rise of Indigenous Movements and the Post-liberal Challenge* (Cambridge: Cambridge University Press, 2005).

<sup>10</sup> On participatory democracy, see Fidel Pérez Flores, Clayton Mendonça Cunha Filho and André Luiz Coelho, 'Mecanismos de democracia participativa: o que há comum nas constituições da Bolívia, Equador e Venezuela?', *Observador On-Line*, 4: 7 (2009); and Santos (ed.), *Democratising Democracy*. On radical democracy, see Postero, 'The Struggle'; and Van Cott, *Radical Democracy*. On radical populism, see Carlos de la Torre, 'The Resurgence of Radical Populism in Latin America', *Constellations*, 14: 3 (2007), pp. 384–97.

<sup>11</sup> See Marlene Choque Aldana, 'Participación y control social en la nueva constitución boliviana', in IDEA Internacional (ed.), *Miradas: Nuevo Texto Constitucional* (La Paz: IDEA Internacional et al., 2010), pp. 500–1; Anria, 'Bolivia's MAS', p. 105; Postero, 'The Struggle', p. 75; and Ton Salman, 'Reinventing Democracy in Bolivia and Latin America', *European Review of Latin American and Caribbean Studies*, 84 (2008), p. 88. The other two usual suspects in this regard are Ecuador under Rafael Correa and Venezuela under Hugo Chávez, yet in the Venezuelan case there is much more doubt as to the basic continuity of democracy, while in Ecuador the deviation from liberal principles is much less pronounced than in Bolivia. See Escobar, 'Latin America'; and Jonas Wolff, 'New Constitutions and the Transformation of Democracy in Ecuador and Bolivia', in Nolte and Schilling-Vacaflor (eds.), *New Constitutionalism in Latin America*, pp. 183–202.

<sup>12</sup> This question is obviously related to the debate about the possible emergence of post-neoliberalism. But while the latter focuses on the economic (development) model, this article deliberately looks at the political regime. On 'post-neoliberalism', see John Burdick, Philip Oxhorn and Kenneth M. Roberts (eds.), *Beyond Neoliberalism in Latin America? Societies and Politics at the Crossroads* (New York: Palgrave Macmillan, 2009); Laura Macdonald and Arne Ruckert (eds.), *Post-Neoliberalism in the Americas* (Basingstoke: Palgrave Macmillan,

Existing studies on these transformations, while often rich in terms of empirical analysis, are usually characterised by a lack of an explicit conceptual framework that would enable a systematic assessment of this question.<sup>13</sup>

This article has, therefore, a dual purpose. On a general level, it aims to develop a conceptual framework that would enable systematic analyses of political change towards post-liberal democracy, in Latin America and beyond, and probes the plausibility of this framework in a case study on Bolivia.<sup>14</sup> On a country-specific level, it seeks to demonstrate that the concept of post-liberal democracy helps us understand the contemporary transformation of democracy in Bolivia. After having made the case that the ongoing transformation of Bolivian democracy can indeed be fruitfully analysed through the lenses of post-liberal democracy, the article also discusses how post-liberal democracy has advantages over competing analytical perspectives such as populism and defective (that is, illiberal or delegative) democracy. The case study on Bolivia covers the period since Morales' first inauguration in January 2006. After a brief overview of the political changes since then, the changes to the politico-institutional order are analysed in detail, looking at the new constitutional framework, the preliminary state of its implementation and, in an inevitably selective way, the actual patterns of Bolivian politics under Morales.

### *Post-Liberal Democracy: A Conceptual Framework*

Even if democracy is usually defined in rather limited, procedural terms, its actual meaning is de facto much more specific: democracy as liberal democracy, according to Schmitter, is generally equated with 'constitutional, representative, individualistic, voluntaristic, privatistic, functionally limited, political democracy as practiced within nation-states'. Post-liberal democracy, then, is about questioning these substantial, if implicit, 'qualifiers' without breaking with basic standards of representative democracy in the Dahlian sense.<sup>15</sup> This is precisely what Ardití is observing in Latin America. The incipient

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2009); and Cristóbal Rovira Kaltwasser, 'Toward Post-Neoliberalism in Latin America?', *Latin American Research Review*, 46: 2 (2011), pp. 225–34.

<sup>13</sup> This is, of course, true for the bulk of studies that are not explicitly interested in post-liberal democracy. See, for example, the collection of essays on 'Latin America's Left Turns' in *Third World Quarterly*, 30: 2 (2010), or the two issues of *Latin American Perspectives* on 'Bolivia Under Morales' (see note 44, below).

<sup>14</sup> The transformation of Bolivian democracy under President Evo Morales is chosen here as a 'plausibility probe' because this case is critical in the sense that, as seen above, the notion of emerging post-liberal democracies in Latin America can 'hardly be expected to hold widely if it did not fit closely there'. Harry Eckstein, *Regarding Politics: Essays on Political Theory, Stability, and Change* (Berkeley, CA: University of California Press, 1992), p. 151.

<sup>15</sup> Schmitter, 'A Sketch', pp. 1–2.

emergence of post-liberal politics ‘does not suggest the end of liberal politics and its replacement with something else, yet it is clear that the *post* of *post-liberal* designates something outside liberalism or at least something that takes place at the edges of liberalism’.<sup>16</sup>

At a very general level, then, post-liberal democracy is characterised by the persistence of the basic features of representative, electoral democracy while being less liberal. But in order to develop a conceptual grasp on Arditì’s ‘something’ beyond or at the edge of liberalism, it is necessary to systematically identify the potential challenges to the substantial, liberal ‘qualifiers’ in liberal democracy.<sup>17</sup> In this sense, a conceptual framework can draw, for example, on the notion of five ‘partial regimes’ that, according to Wolfgang Merkel and colleagues, constitute the main pillars of liberal democracy (see Figure 1).<sup>18</sup> By taking such a substantially liberal conception of democracy as a benchmark, it becomes possible to systematically identify the potential challenges and deviations that a movement towards post-liberal democracy might include.

(A) *Electoral regime*: The competitive election of public office-holders is at the core of liberal democracy. At the same time, however, the direct control of the population, in the liberal democratic model, ‘is limited to the election of the governing elite and does not have any influence on how power is exercised between elections’.<sup>19</sup> Substantially, this limited reach of the electoral regime points to liberal democracy’s fear of the Tocquevillian ‘tyranny of the majority’. In this sense, direct-democratic or plebiscitary mechanisms, by expanding the reach of popular elections and majority decisions, challenge the usual boundaries of liberal democracy.<sup>20</sup> At the same time, communal forms of self-government at the sub-national level that rely not on electoral rule but rather on ‘deliberative assemblies for decision-making, horizontality in

<sup>16</sup> Arditì, ‘Arguments about the Left Turns’, p. 73. See also Escobar, ‘Latin America’, p. 3.

<sup>17</sup> Given the peculiar character of any ‘post-something’ concept, post-liberal democracy is conceptually defined negatively by its differences to, and commonalities with, liberal democracy, hence the focus on challenges. If we could define in a positive way the main features of a post-liberal democracy, we could give it a proper name.

<sup>18</sup> Wolfgang Merkel, ‘Embedded and Defective Democracies’, *Democratization*, 11: 5 (2004), pp. 36–43. There are of course innumerable proposals for conceptualising liberal democracy, but for the purpose of this paper, the one developed by Merkel, Puhle and colleagues seems particularly suitable because it deliberately goes beyond a narrow notion of liberal democracy as polyarchy. Not only do the five partial regimes cover all the elements usually identified as typically liberal dimensions of liberal democracy, but also, as will be seen, the shape of these partial regimes is specified in fairly substantial liberal ways. The concept has been developed in detail in Wolfgang Merkel, Hans-Jürgen Puhle, Aurel Croissant, Claudia Eicher and Peter Thiery, *Defekte Demokratie. Band 1: Theorie* (Opladen: Leske + Budrich, 2003).

<sup>19</sup> Merkel, ‘Embedded and Defective Democracies’, p. 38.

<sup>20</sup> Escobar, ‘Latin America’, pp. 19, 27–8; see also Michael Coppedge, John Gerring et al., ‘Conceptualising and Measuring Democracy: A New Approach’, *Perspectives on Politics*, 9: 2 (2011), pp. 247–67, 253.



Figure 1. *The Analytical Framework: Post-Liberal Challenges to Liberal Democracy*

<b>(C) Civil rights:</b> → Expanding democracy's reach vis-à-vis constitutional/institutional limits → Expanding the notion of citizenship	<b>(B) Political rights:</b> → Recognising participation by mobilisation → Establishing rights to participation in resource allocation
<b>(D) Division of power, horizontal accountability:</b> → Strengthening vertical accountability → Expanding democratic control of non-elected bodies	<div data-bbox="365 434 773 711"> <b>(A) Electoral regime:</b>          → Strengthening direct democracy, plebiscitarian mechanisms          → Establishing (non-electoral) communal forms of self-governance       </div> <div data-bbox="773 564 1003 897"> <b>(E) Effective power to govern:</b>          → Expanding the reach of democratic decision-making          → Establishing reserved domains for particular communities       </div>

Source: author's elaboration, drawing on Wolfgang Merkel, 'Embedded and Defective Democracies', *Democratization*, 11: 5 (2004), p. 37, Fig. 1.

organizations, and rotation of assignments' may exempt crucial – especially local – policy domains from the electoral regime.<sup>21</sup>

(B) *Political rights of participation*: These, again, are crucial as preconditions for competitive elections, but also constrained. They consist in the right to vote (in representative elections; see above) as well as in the range of freedoms (of association, assembly, speech, opinion) that enable the collective formulation of opinions and demands. At the same time, 'non-electoral politics', such as non-institutional political participation through social movements, do not have a systematic place in this liberal democratic conception,<sup>22</sup> nor have 'non-liberal channels of participation', such as participatory budgeting, 'that seek a voice in the allocation of public resources rather than in the designation of public authorities'.<sup>23</sup> Liberal critics have argued against both non-institutional and

<sup>21</sup> Escobar, 'Latin America', p. 32. See also Santos, 'Enriquecer la democracia', p. 29.

<sup>22</sup> Arditi, 'Arguments about the Left Turns', p. 77.

<sup>23</sup> *Ibid.*, p. 76. See also Santos, 'Enriquecer la democracia', p. 29.

non-liberal participation on the basis that these, by breaking with standards of equal representation and privileging those that mobilise and organise best, are selective and, in the end, undemocratic. Others see participatory innovations as 'parallel and alternative channels that complement representation', or even 'as an integral part of representation itself' that solves some of the well-known deficits of representative institutions.<sup>24</sup> Whatever their precise relation with existing liberal democratic institutions might be, as long as unconventional forms of participation remain embedded in a representative framework they clearly do not replace liberal democracy, but rather add non-liberal mechanisms. If systematically established, both participation by mobilisation and participation in resource allocation, therefore, point towards post-liberal democracy.

(C) *Civil rights*: The 'basic constitutional rights' that protect 'the individual against the state executive and against acts of the elected legislator' represent the core element in the liberal (constitutional) containment of popular sovereignty.<sup>25</sup> Democracy, from the liberal perspective, has to be tamed in order to be democratic.<sup>26</sup> Post-liberal democracy may deviate from this conception in two ways. First, democracy's reach can be expanded, either formally by subjecting constitutional issues to democratic procedures (for example, through constituent assemblies or referenda on constitutional reforms) or informally by means of a 'populist' style of governance that, by invoking 'the power of the people', tends to bypass institutional constraints.<sup>27</sup> Second, the notion of citizenship rights itself can be broadened. Whereas, in the liberal democratic model, 'the socio-economic context' is considered something outside the democratic regime even if the latter is embedded in the former,<sup>28</sup> 'social citizenship' as defined by T. H. Marshall may also be regarded as an indispensable feature if formal (liberal) equality is to have any real meaning.<sup>29</sup> Here, liberal democracy's 'restriction to formal political equality' and to civil rights that protect the citizen *against* the state is challenged.<sup>30</sup> Furthermore, the introduction of collective rights can challenge

<sup>24</sup> Enrique Peruzzotti and Andrew Selee, 'Participatory Innovation and Representative Democracy in Latin America', in Selee and Peruzzotti (eds.), *Participatory Innovation and Representative Democracy in Latin America* (Washington, DC: Woodrow Wilson Center Press, 2009), p. 4.

<sup>25</sup> Merkel, 'Embedded and Defective Democracies', p. 39.

<sup>26</sup> See Coppedge et al., 'Conceptualising and Measuring Democracy', p. 253; and Santos, 'Enriquecer la democracia', p. 30.

<sup>27</sup> See Yves Mény and Yves Surel, 'The Constitutive Ambiguity of Populism', in Mény and Surel (eds.), *Democracies and the Populist Challenge* (Basingstoke: Palgrave Macmillan, 2002), pp. 1–21.

<sup>28</sup> Merkel, 'Embedded and Defective Democracies', p. 44.

<sup>29</sup> Evelyne Huber, Dietrich Rueschemeyer and John D. Stephens, 'The Paradoxes of Contemporary Democracy: Formal, Participatory, and Social Dimensions', *Comparative Politics*, 29: 3 (1997), p. 324.

<sup>30</sup> Schmitter, 'A Sketch', p. 3.



the individualist conception of liberal rights itself.<sup>31</sup> Collective rights (of indigenous peoples and/or ethnic minorities) can aim at protecting specific groups against the state, at endowing them with entitlements to autonomy and/or at obliging the state to respond to the specific needs of groups.

(D) *Division of powers and horizontal accountability*: In the liberal democratic model, the existence of ‘state agencies that are authorized and willing to oversee, control, redress, and if need be sanction unlawful actions by other state agencies’ is the primary mechanism to prevent the democratic state, specifically the executive, from infringing on individual freedoms and undermining competitive elections.<sup>32</sup> The rule of law is, certainly, the most important element here. Yet, the role of ‘complex systems of “checks and balances”’ is not limited to securing such basic democratic principles;<sup>33</sup> given liberal democracy’s ‘hostility to coercive public authority, especially when backed by large numbers of less-privileged citizens’, checks and balances deliberately constrain the power of the state and, in particular, of those institutions expressing popular sovereignty.<sup>34</sup> This hostility may be challenged in two ways. First, vertical accountability may be reinforced, either by subjecting bodies of the state formerly shielded from direct democratic interferences to popular elections or by strengthening mechanisms of social control ‘from below’. The aforementioned mechanisms of direct or plebiscitary democracy as well as non-conventional forms of participation (by mobilisation and in resource allocation) have such an effect. Second, the democratically elected powers of the state may be strengthened vis-à-vis the more ‘technical’ entities, thereby challenging the distribution of labour in contemporary liberal democracies in which manifold ‘unelected bodies’ take a great deal of relevant policy decisions.<sup>35</sup> Given the liberal emphasis on the rule of law, the most controversial issue concerns the potential (post-liberal) challenge to the view that judicial authorities are to be viewed as apolitical bodies that take technical decisions and should therefore be separated and shielded from democratic control.<sup>36</sup>

(E) *Effective power to govern*: The criterion ‘that the elected representatives are the ones that factually govern’ refers to the idea of preventing

<sup>31</sup> See Escobar, ‘Latin America’.

<sup>32</sup> Guillermo O’Donnell, ‘Horizontal Accountability in New Democracies’, *Journal of Democracy*, 9: 3 (1998), p. 119. See also Merkel, ‘Embedded and Defective Democracies’, p. 40.

<sup>33</sup> Schmitter, ‘A Sketch’, p. 3.

<sup>34</sup> *Ibid.*; see also Coppedge et al., ‘Conceptualising and Measuring Democracy’, p. 253.

<sup>35</sup> Frank Vibert, *The Rise of the Unelected: Democracy and the New Separation of Powers* (Cambridge: Cambridge University Press, 2007).

<sup>36</sup> See Franz Xavier Barrios Suvelza, ‘The Weakness of Excess: The Bolivian State in an Unbounded Democracy’, in John Crabtree and Laurence Whitehead (eds.), *Unresolved Tensions: Bolivia Past and Present* (Pittsburgh, PA: University of Pittsburgh Press, 2008), pp. 126–30.

'extra-constitutional actors not subject to democratic accountability, like the military or other powerful actors, from holding (final) decision-making power in certain policy domains'.<sup>37</sup> In the liberal democratic framework, however, the reach of this rather self-evident condition is fairly restrained. It explicitly does not encompass either institutions regarded as necessary to uphold the constitutional order per se (such as an independent judiciary including a constitutional court) or the aforementioned 'unelected bodies' whose relative autonomy is seen as functionally superior to democratic control.<sup>38</sup> Furthermore, liberal democracy as a political regime for capitalist societies accepts major economic decision-making power by business leaders and anonymous markets, with immediate and far-reaching implications for both democratic politics and society.<sup>39</sup> These limits to the effective power to rule are, of course, contested and may be challenged systematically by increasing the reach and scope of democratic decision-making both within the state and vis-à-vis society/economy. Post-liberal ways of increasing the democratic state's effective power to govern include efforts to extend the reach of democratic institutions to those parts of the state apparatus and to non-state spheres that are seen, in the liberal model, as domains of technical or private decision-making. For example, an emphasis on economic steering and active economic participation by the state may transcend the liberal notion of a market economy.<sup>40</sup> At the same time, the reach of democratically elected organs may also be limited in ways not envisioned by liberal democracy. For instance, the recognition of indigenous self-government by non-electoral, 'traditional' means implies, from the liberal democratic perspective, the establishment of 'reserved policy domains ... over which the government and parliament do not possess sufficient decision-making authority'.<sup>41</sup> To the extent that the state recognises autonomous spheres where, for example, indigenous community justice applies, the effective reach of the liberal rule of law is deliberately reduced.<sup>42</sup>

Based on this overall conceptual framework, it is possible to study trends towards post-liberal democracy by analysing whether ongoing processes of political change imply challenges to liberal democracy's different boundaries in the five partial regimes without maintaining basic liberal democratic norms across the five dimensions.

<sup>37</sup> Merkel, 'Embedded and Defective Democracies', p. 41.

<sup>38</sup> See *ibid.*, p. 42; and Vibert, *The Rise of the Unelected*.

<sup>39</sup> See Charles Lindblom, 'The Market as Prison', *Journal of Politics*, 44: 2 (1982), pp. 324–36.

<sup>40</sup> See Escobar, 'Latin America'.

<sup>41</sup> Merkel, 'Embedded and Defective Democracies', p. 41.

<sup>42</sup> See John L. Hammond, 'Indigenous Community Justice in the Bolivian Constitution of 2009', *Human Rights Quarterly*, 33: 3 (2011), pp. 649–81.

*Bolivia under Evo Morales: A brief overview*

Following a turbulent transition to democracy, after 1985 Bolivia became a much-lauded development model that successfully followed a path of democratisation, stabilisation and neoliberal economic reform.<sup>43</sup> Between 2000 and 2005, however, a series of political crises erupted, characterised by massive social protests that forced the resignation of both elected president Sánchez de Lozada in 2003 and his successor Carlos Mesa in 2005. In the course of this period of recurring crises, the union leader, coca grower and head of the Movimiento al Socialismo (Movement toward Socialism, MAS) Evo Morales established himself as the leading representative of the diverse protest movements. In December 2005, Morales was elected president of Bolivia by an absolute majority of the vote, becoming the country's first head of state of indigenous origin. Since taking office, Morales has initiated a process of profound political change that includes, as core elements, a restructuring of the political system via a constituent assembly and policy changes in a series of areas, chiefly economic, social, drug and foreign policies.<sup>44</sup>

The 're-founding' of the country via a constituent assembly had been a long-standing demand of Bolivia's indigenous movements. The assembly was elected in July 2006 and finished its work in December 2007. However, the adoption of the draft constitution by a two-thirds majority of the assembly's present members, in the absence of the most important opposition groups, was heavily disputed. Especially in the eastern lowland departments, where opposition to Morales was strongest, regional autonomy movements mobilised against the government. Following nine months of political struggle, in October 2008 a two-thirds majority in Congress agreed on a detailed revision of the constitutional draft.<sup>45</sup> In January 2009, the new Constitution was approved in a referendum by more than 60 per cent of the population. In general elections at the end of the year, Morales was re-elected and the MAS won a two-thirds majority in the new parliament, the Asamblea Legislativa Plurinacional (Plurinational Legislative Assembly). Since 2010, a series of organic laws has been approved in order to implement the new constitutional framework.<sup>46</sup>

<sup>43</sup> See René Antonio Mayorga, 'Bolivia's Silent Revolution', *Journal of Democracy*, 8: 1 (1997), pp. 142–56.

<sup>44</sup> See Crabtree and Whitehead (eds.), *Unresolved Tensions*; Benjamin Kohl and Rosalind Bresnahan (issue eds.), 'Bolivia Under Morales', *Latin American Perspectives*, 37: 3–4 (2010); and María Tereza Zegada, Claudia Arce, Gabriela Canedo and Alber Quispe, *La democracia desde los márgenes: transformaciones en el campo político boliviano* (La Paz: CLACSO, 2011).

<sup>45</sup> See Carlos Romero, Carlos Böhrt and Raúl Peñaranda, *Del conflicto al diálogo: memorias del acuerdo constitucional* (La Paz: FBDM/FES-ILDIS, 2009).

<sup>46</sup> This included laws on the Electoral Organ, the electoral regime, the constitutional court, the Judicial Organ, autonomy and decentralisation, and jurisdictional delimitation.

In the area of economic and social policies, Morales had promised to break with neoliberalism. Correspondingly, the government significantly increased the role of the state in the economy. Following Morales' declaration of a nationalisation of the country's gas resources in May 2006, international gas companies were forced into new contractual relationships; the control of the state, and of the state-owned gas company YPFB, in the hydrocarbon sector was strengthened; and taxes on gas companies were increased. At the same time, the government used rising revenues from hydrocarbon and mineral resources to expand social spending and public investment.<sup>47</sup> In addition, Morales abandoned the US-driven emphasis on coerced coca eradication and legalised coca, while continuing counter-narcotics efforts directed at drug production and trafficking.<sup>48</sup>

### *A Post-Liberal Democracy in the Making*

To what extent does Bolivia's new Constitution establish a framework for post-liberal democracy in that country?<sup>49</sup> And to what extent can we find evidence of post-liberal forms of politics under the government of Evo Morales?<sup>50</sup> Across the above-mentioned five dimensions, the following analysis

<sup>47</sup> See Mark Weisbrot, Rebecca Ray and Jake Johnston, 'Bolivia: The Economy during the Morales Administration' (Washington, DC: Center for Economic and Policy Research, 2009), available at [www.cepr.net/documents/publications/bolivia-2009-12.pdf](http://www.cepr.net/documents/publications/bolivia-2009-12.pdf).

<sup>48</sup> The Morales government, in particular, recognised the coca leaf's traditional role in indigenous cultures, increased the level of legal coca production and trade, and pushed for coca's international legalisation. It did try to limit the amount of coca production via cooperative forms of social control at the community level while continuing joint military-police counter-narcotics efforts to cut down on drug trafficking. See Linda Farthing and Benjamin Kohl, 'Social Control: Bolivia's New Approach to Coca Reduction', *Latin American Perspectives*, 37: 4 (2010), pp. 197–213.

<sup>49</sup> The following case study draws mainly on the analysis of primary and secondary sources but was also informed by a series of interviews conducted in La Paz, Santa Cruz and Cochabamba between April and May 2009.

<sup>50</sup> On Bolivia's new Constitution, see IDEA Internacional (ed.), *Miradas*; Susanne Käss and Iván Velásquez Castellanos (eds.), *Reflexión crítica a la nueva Constitución Política del Estado* (La Paz: Konrad Adenauer Stiftung, 2009); Romero, Böhr and Peñaranda, *Del conflicto al diálogo*; Almut Schilling-Vacaflo, 'Bolivia's New Constitution: Towards Participatory Democracy and Political Pluralism?', GIGA Working Paper 141 (Hamburg: GIGA, 2010), available at [www.giga-hamburg.de/dl/download.php?id=/content/publikationen/pdf/wp141\\_schilling.pdf](http://www.giga-hamburg.de/dl/download.php?id=/content/publikationen/pdf/wp141_schilling.pdf); and Wolff, 'New Constitutions'. For overviews of Bolivia's political development under Morales, see Bertelsmann Stiftung, *BTI 2010: Bolivia Country Report* (Gütersloh: Bertelsmann Stiftung, 2010), available at [www.bti-project.de/fileadmin/Inhalte/reports/2010/pdf/BTI%202010%20Bolivia.pdf](http://www.bti-project.de/fileadmin/Inhalte/reports/2010/pdf/BTI%202010%20Bolivia.pdf); Crabtree and Whitehead (eds.), *Unresolved Tensions*; Eduardo A. Gamarra, 'Morales and Democracy', in Jorge I. Domínguez and Michael Shifter (eds.), *Constructing Democratic Governance in Latin America: Third Edition* (Baltimore, MD: Johns Hopkins University Press, 2008), pp. 124–51; Kohl and Bresnahan (issue eds.), 'Bolivia Under Morales'; Postero, 'The Struggle'; and Zegada et al., *La democracia desde los márgenes*.

will show that the emerging political regime in Bolivia *maintains* the basic norms and institutions of representative democracy while partially *modifying* them by adding other, heterodox or non-liberal notions of democracy, participation and governance.<sup>51</sup>

(A) Electoral democracy and the usual representative institutions constitute the core of the new 'plurinational state' as conceptualised by the new Constitution. Therefore, according to the usual measures by Freedom House, Polity and Bertelsmann, Bolivia is still considered a democracy.<sup>52</sup> However, the Constitution regards representative democracy as only one form of government, complemented by 'participatory' and 'communitarian' democracy (Article 11/I).<sup>53</sup> While the latter refers to indigenous self-government (dealt with below), the former concerns the exercise of democracy in general and encompasses 'direct and participatory' forms such as referenda, citizens' legislative initiatives and the revocation of mandates (Article 11/II).<sup>54</sup> Popular approval via referendum is required in cases of constitutional changes, the ratification of international treaties, and the establishment of departmental, regional, municipal or indigenous autonomies (Articles 411, 257–9, 274–5, 280, 294–5).<sup>55</sup> In general, referenda can be held at the national, departmental and municipal levels (Articles 298/II, 300/I, 302/I), and legislative initiatives of citizens must be considered in parliament (Article 162/I) – but the precise scope and the corresponding procedures of such referenda and initiatives are not specified in the Constitution.<sup>56</sup> Finally, recall referenda represent a new

<sup>51</sup> See Choque, 'Participación y control social', pp. 494–5; Escobar, 'Latin America', p. 27; Postero, 'The Struggle', pp. 71–2; Carlos Romero Bonifaz, 'Los ejes de la Constitución Política del Estado Plurinacional de Bolivia', in IDEA Internacional (ed.), *Miradas*, p. 29; and Zegada et al., *La democracia desde los márgenes*, chap. 4.

<sup>52</sup> See [www.freedomhouse.org/country/bolivia](http://www.freedomhouse.org/country/bolivia); [www.systemicpeace.org/polity/Bolivia2010.pdf](http://www.systemicpeace.org/polity/Bolivia2010.pdf); and [www.bti-project.de/laendergutachten/lac/bol](http://www.bti-project.de/laendergutachten/lac/bol).

<sup>53</sup> This and all following references to articles, unless otherwise stated, refer to República de Bolivia, *Constitución Política del Estado: texto aprobado en el referéndum constituyente de enero de 2009* (República de Bolivia, 2009).

<sup>54</sup> Further vehicles for direct and participatory democracy include assemblies (*asambleas*) and councils (*cabildos*), but these are to have a 'deliberative character' only (Article 11/II). A final participatory mechanism is the *consulta previa* (prior consultation) – that is, the right of indigenous peoples to 'be consulted ... whenever there may be legislative or administrative measures that may affect them' (Article 30/II). See also the corresponding Ley del Régimen Electoral (Ley 026, 30 June 2010), available at [www.gobernabilidad.org.bo/images/upload\\_slides/documentos/ley\\_del\\_regimen\\_electoral\\_bolivia.pdf](http://www.gobernabilidad.org.bo/images/upload_slides/documentos/ley_del_regimen_electoral_bolivia.pdf).

<sup>55</sup> Popular approval of international treaties is mandatory if these imply border issues or processes of monetary, structural economic or political integration. In addition, a referendum can be requested by 5 per cent of the registered voting population or 35 per cent of the members of parliament (Article 257–9).

<sup>56</sup> The corresponding law passed in June 2010 determines that, to initiate a referendum at the national level, the support of at least 20 per cent of the voting population (and in no department less than 15 per cent) is needed. In addition, various issues – like the unity and integrity of the plurinational state, taxes, internal and external security, organic and

mechanism of vertical accountability or popular control, which gives voters the opportunity to revoke the mandate of all elected representatives. Only the judiciary, whose highest authorities are also elected by popular vote, is protected from revocation (Article 240).

The evolution of Bolivian politics since the election of Evo Morales in late 2005 confirms this ambivalent impact on the dimension of electoral representation. Representative institutions – the executive, Congress, Constituent Assembly and Plurinational Legislative Assembly – have clearly dominated political life, yet their relative autonomy vis-à-vis society has been limited by both formal and informal institutions of vertical accountability. Formally, major political decisions have been dependent on public approval via referendum.<sup>57</sup> Informally, a diverse spectrum of social groups has almost continuously put pressure on representative institutions. This has included oppositional protests by the regional autonomy movements, all kinds of mobilisation around the Constituent Assembly, pro-government protests putting pressure on parliament, and the mobilisation of former allies of Morales for particular demands or against specific political decisions.<sup>58</sup> Frequently, both the government and the opposition have used allied social organisations instrumentally to coerce representative institutions.<sup>59</sup>

At the same time, since the electoral victories of Morales and the MAS in late 2005, both Bolivia's government and parliament have become considerably more representative than ever before, which has also politically strengthened these representative institutions.<sup>60</sup> Very generally, 'The political

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framework laws, and the validity of human rights – are exempted from popular decisions. See Ley del Régimen Electoral, Article 16/II, 14.

<sup>57</sup> Besides a referendum on establishing a regime of departmental autonomy (2006), which was followed in 2008 by illegal referenda on statutes of autonomy in selected departments, and the constitutional referendum in 2009, the revocation of mandates had already been tested before the new Constitution entered into force. In August 2008, Morales easily survived a recall referendum; among the prefects (governors) at the departmental level, Morales' major opponents also won their recall referenda while two (opposition) prefects lost their offices. See Zegada et al., *La democracia desde los márgenes*, p. 78.

<sup>58</sup> See Anrí, 'Bolivia's MAS', p. 113; Dunia Mokrani, 'Análisis de coyuntura: Escenarios en la segunda gestión gubernamental de Evo Morales', available at [www.rosalux.org.ec/es/analisis/bolivia/item/208-mokrani](http://www.rosalux.org.ec/es/analisis/bolivia/item/208-mokrani); Roberto Laserna, 'Mire, la democracia boliviana, en los hechos...', *Latin American Research Review* 45: Special Issue (2010), pp. 27–58; and Zegada et al., *La democracia desde los márgenes*, pp. 49–62, 93–8.

<sup>59</sup> See René Antonio Mayorga, 'Sociedad civil y Estado bajo un populismo plebiscitario y autoritario', in Cynthia J. Arnson et al. (eds.), *La 'Nueva Izquierda' en América Latina: derechos humanos, participación política, y sociedad civil* (Washington, DC: Woodrow Wilson International Center for Scholars, 2009), p. 113; Laserna, 'Mire, la democracia boliviana'; Van Cott, 'Latin America's Indigenous Peoples', pp. 136–7.

<sup>60</sup> Morales is indeed the first president since the transition to democracy in the 1980s that can count on direct democratic legitimation as he was elected (twice) in the first round with an



inclusion of indigenous peoples improves the representational dimension of democracy.<sup>61</sup> Opinion polls demonstrate that this perception is widely shared among Bolivians<sup>62</sup> and has led to a 'restoration of trust in the political system'.<sup>63</sup>

(B) The new Constitution guarantees all those political rights that mainstream conceptions of liberal democracy would expect (Articles 26–9).<sup>64</sup> Yet, in contrast to usual notions of representative democracy, political parties have lost their monopoly on representation.<sup>65</sup> Reinforcing changes in the modes of political representation already under way since the mid-1990s, indigenous organisations (*organizaciones de las naciones y pueblos indígena originario campesinos*)<sup>66</sup> and citizens' groups (*agrupaciones ciudadanas*) can compete with political parties for elected public office on an equal footing (Article 209). Most notably, the Constitution modifies liberal notions of political participation in the section on 'Participation and Social Control' (Articles 241–2). Here, it is established that the 'sovereign people, through organised civil society, participates in the design of public policies'. Furthermore, 'organised civil society exercises social control' over state administration, public enterprises and institutions. How to organise this kind of participation and social control is left up to 'civil society', but the Constitution stipulates that there will be a law establishing a general framework (Article 241).<sup>67</sup> During the Constituent Assembly, there were even demands to elevate this control by civil society (that is, by social movements) to a 'fourth power' of the state that 'would stand above the classic powers' and control them.<sup>68</sup> While this would have meant an open rupture with

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absolute majority, whereas, in the case of his predecessors, it was Congress that decided the run-off.

<sup>61</sup> Van Cott, 'Latin America's Indigenous Peoples', p. 134. See also Gamarra, 'Morales and Democracy', p. 134.

<sup>62</sup> Programa de las Naciones Unidas para el Desarrollo (PNUD), *Los cambios detrás del cambio: informe nacional sobre desarrollo humano en Bolivia* (La Paz: PNUD, 2010), pp. 26–7.

<sup>63</sup> Gamarra, 'Morales and Democracy', p. 135.

<sup>64</sup> See Carlos Böhrt Irahola, 'Cuarenta días que conmovieron a Bolivia y un pacto político forzado', in Romero, Böhrt and Peñaranda, *Del conflicto al diálogo*, pp. 72–3; and Carlos Cordero Carraffa, 'Nueva Constitución, nuevo gobierno, nuevo Estado', in IDEA Internacional (ed.), *Miradas*, pp. 80–1.

<sup>65</sup> Romero, 'Los ejes de la Constitución', p. 23.

<sup>66</sup> The Bolivian Constitution refers to 'naciones y pueblos indígena originario campesinos', translated here, for the sake of simplicity, as 'indigenous peoples'.

<sup>67</sup> The latter restriction to civil society self-organisation resulted from the aforementioned congressional revision. In the original draft, organised civil society was meant to participate in decisions about public policy and was free to independently establish 'its own norms and way of working'. María Zegada, 'Análisis político de las reformas al Proyecto de Constitución y de la aprobación de la Ley de Convocatoria al Referéndum', *Opiniones y Análisis*, 97 (2008), p. 54.

<sup>68</sup> Barrios, 'The Weakness of Excess', p. 136.

representative democracy, the new Constitution, in the end, stuck to simply amending the representative institutions with additional mechanisms of participation through mobilisation and in resource allocation that are, ultimately, under the control of parliament.<sup>69</sup>

With a view to the practice of 'participation and social control', political access to government and parliament by social movements and organisations representing the popular sectors, including the indigenous movements, has increased significantly under the new government.<sup>70</sup> That notwithstanding, actual participation has been limited up to now. Scholars have pointed to attempts by the MAS government to co-opt civil society organisations, to monopolise decision-making in a small group of MAS leaders, to steer participation from above and to concentrate power in the person of the president.<sup>71</sup> Indeed, while the corresponding law has yet to be adopted by parliament, the preliminary mechanisms of participation and social control reveal a fairly top-down pattern of consultation. It is the corresponding state entity (for example, a particular ministry) that 'summons those social organisations that it considers pertinent to a meeting with an established agenda'.<sup>72</sup> In general, there is increasing criticism among Bolivian social movements and left-wing critics of Morales that the MAS government, by distancing itself from its own base and concentrating ever more power in the executive, has frustrated the participatory promises enshrined in the Constitution.<sup>73</sup>

This said, the well-known but informal practices of 'non-electoral politics' and 'non-liberal channels of participation' are still far more important than the formally institutionalised ones.<sup>74</sup> In the absence of effective formal channels of accountability, popular organisations within and close to the MAS hold Morales accountable by mobilising autonomously.<sup>75</sup> Since 2010,

<sup>69</sup> See *ibid.*, pp. 136–7; Roger Cortéz Hurtado, 'Control social: la desconfianza armada', in Käss and Velásquez (eds.), *Reflexión crítica*, p. 351; and Juan Carlos Pinto Quintanilla, 'Sobre el control social y la Constitución', in IDEA Internacional (ed.), *Miradas*, p. 489.

<sup>70</sup> See Benjamin Kohl, 'Bolivia under Morales: A Work in Progress', *Latin American Perspectives*, 37: 3 (2010), p. 112; Barrios, 'The Weakness of Excess', p. 138; and Zegada et al., *La democracia desde los márgenes*, pp. 245–6.

<sup>71</sup> See Anria, 'Bolivia's MAS'; Schilling-Vacaflor, 'Bolivia's New Constitution', pp. 14–7; Pablo Stefanoni, 'Indianismo y nacionalismo revolucionario: un análisis del gobierno de Evo Morales', in Pablo Ospina, Olaf Kaltmeier and Olaf Büschges (eds.), *Los Andes en movimiento: identidad y poder en el nuevo paisaje político* (Quito: Corporación Editora Nacional, 2009), pp. 103–4; and Zegada et al., *La democracia desde los márgenes*, chap. 6.

<sup>72</sup> Moira Zuazo, '¿Los movimientos sociales en el poder? El gobierno del MAS en Bolivia', *Nueva Sociedad*, 227 (2010), pp. 128–35, quote at p. 134.

<sup>73</sup> See Mokrani, 'Análisis de coyuntura'; and Zegada et al., *La democracia desde los márgenes*, chap. 6.

<sup>74</sup> Arditi, 'Arguments about the Left Turns', pp. 76–7. See also Cortéz, 'Control social'.

<sup>75</sup> Anria, 'Bolivia's MAS', pp. 112–13.

increasing protests by social groups and organisations that generally have been close to or allied with Morales and the MAS have demonstrated that this constitutes a real constraint and check on a government which, at the moment, has no serious contenders within the representative institutions.<sup>76</sup> This implies, however, that the Constitution's attempt to channel Bolivia's 'participatory culture' through the social control exercised by 'organised civil society' has yet to show results.<sup>77</sup> Furthermore, the informal character of much of the 'participation and social control' means that the relative gains in terms of collective political participation through social organisations are far from secured. Effective informal participation depends on the goodwill of the government and/or the capacity to enforce access to the government by mobilisation, and the government can use informal mechanisms of bottom-up participation as informal mechanisms of top-down control and co-optation.<sup>78</sup>

(C) The Constitution also recognises the liberal canon of civil rights (Articles 21–5), including the right to private property (Article 56).<sup>79</sup> However, already the emphasis on the sovereignty of the Bolivian people which is to be exercised 'in direct and delegated forms' (Article 7) makes it clear that the balance between 'the rule of the people', on the one hand, and 'the rule of law' and 'constitutionalism', on the other,<sup>80</sup> is recalibrated in favour of the former.<sup>81</sup> Hence the Constitution can be substantially and even entirely rewritten by means of a Constituent Assembly which is convoked by referendum, elected by the people and endowed 'with full powers' (*plenipotenciaria*) (Article 411). Overall, the Constitution expands the role of majority decisions, both through extending the reach of popular elections and referenda and by increasing the number of 'fundamental political decisions' in parliament that are adopted by an absolute majority of the votes.<sup>82</sup>

In the practice of political decision-making under the new Constitution, these questions – 'rule of the people' vs. 'constitutionalism' and absolute

<sup>76</sup> See Mokrani, 'Análisis de coyuntura'; and Zegada et al., *La democracia desde los márgenes*, pp. 93–8. While this is clearly not in the interest of the MAS government, it corresponds to the notion of vertical checks and balances already emphasised by Evo Morales in his pre-inauguration speech at Tiwanaku in January 2006, where he explicitly urged his followers to control, correct and push him. James Dunkerley, 'Evo Morales, the "Two Bolivias" and the Third Bolivian Revolution', *Journal of Latin American Studies*, 39: 1 (2007), p. 165.

<sup>77</sup> Choque, 'Participación y control social', p. 494. <sup>78</sup> See Anrí, 'Bolivia's MAS'.

<sup>79</sup> See Guillermo Richter Ascimani, 'Análisis crítico de la nueva Constitución Política del Estado', in IDEA Internacional (ed.), *Miradas*, p. 103; and Böhr, 'Cuarenta días', p. 74.

<sup>80</sup> Mény and Surel, 'The Constitutive Ambiguity', pp. 8–10.

<sup>81</sup> See Barrios, 'The Weakness of Excess', p. 128.

<sup>82</sup> Romero, 'Los ejes de la Constitución', p. 29. However, the congressional revision of the draft constitution re-established the need for two-thirds majorities for some crucial decisions, namely for the election of those members of the different electoral tribunals determined by parliament and for partial reforms of the Constitution; see Böhr, 'Cuarenta días', pp. 89, 105.

vs. two-thirds majorities – have not been too relevant. On the one hand, the MAS could count on two-thirds of the members of the new plurinational parliament; on the other, interim judges appointed by President Morales in February 2010 did not openly challenge government. It remains to be seen whether this will change with the new judicial authorities that took office in January 2012 following the contested popular elections in October 2011.

During the process of constitutional reforms itself, the government's emphasis on the majority will of the people clearly meant that respect for institutional and constitutional constraints was rather limited.<sup>83</sup> Hence the Bertelsmann Transformation Index notes a 'decisive move towards derision, neglect and marginalization of representative democracy's basic institutions, mechanisms, and procedures, including the judiciary'.<sup>84</sup> This particularly refers to disputes between the government and the highest echelons of the judiciary, during which the latter gradually lost their capacity to act and decide in a series of resignations that were not followed by new appointments until February 2010. But even in this transitory period the MAS's emphasis on the majority will of the people did not mean openly breaking with the basic constraints of democratic institutions. Most notably, the government accepted the decision by the Electoral Court, which had demanded a law before organising the constitutional referendum, and agreed to parliamentary negotiations that, in the end, enabled a two-thirds majority in the old Congress.<sup>85</sup> The 'grim forecast' made by Fabrice Lehoucq in September 2008, that 'Morales's supporters will accept nothing less than the enactment of a radically new constitution', thus proved overly pessimistic; the alleged 'breakdown of constitutional democracy' remained a transitory constitutional crisis.<sup>86</sup>

Another challenge to liberal conceptions in this dimension concerns the notion of citizenship. The 'fundamental rights' recognised by the new Constitution clearly go beyond the usual series of political and civil rights by strengthening socio-economic and collective rights.<sup>87</sup> The former include universal entitlements to free education and health care and access to drinking water and sewerage, electricity, cooking gas, and basic postal and telecommunication services as well as social security and retirement (Articles 16–20, 45). The latter constitute far-reaching rights for indigenous peoples in the framework of the new 'plurinational state'. Both types of rights come with

<sup>83</sup> See Barrios, 'The Weakness of Excess', pp. 134–5; and Fabrice Lehoucq, 'Bolivia's Constitutional Breakdown', *Journal of Democracy*, 19: 4 (2008), pp. 111–24.

<sup>84</sup> Bertelsmann Stiftung, *BTI 2010: Bolivia Country Report*, pp. 11–12.

<sup>85</sup> Raúl Peñaranda U., 'Crónica del proceso constituyente', in Romero, Böhrt and Peñaranda, *Del conflicto al diálogo*, pp. 150–1.

<sup>86</sup> Lehoucq, 'Bolivia's Constitutional Breakdown', p. 122.

<sup>87</sup> See Farit Rojas Tudela, 'Análisis y comentario de la Primera Parte de la CPE', in IDEA Internacional (ed.), *Miradas*, pp. 283–94.

consequences for civil and political rights. Extended socio-economic rights imply that economic activities are required to play a positive social, economic and environmental role (Article 312); that the right to private property is conditional on its performing a 'social function' (Article 56); that land rights are limited by a ban on the *latifundio* which includes an upper limit of 5,000 hectares and the requirement to fulfil a 'social-economic function' (Article 398); and that the privatisation of basic public services – namely, the supply of water, sewage, public health and social security services – is prohibited (Article 20, 38, 45).<sup>88</sup> While constitutional guarantees apply, the exercise of political and civil rights is obviously constrained in the context of indigenous 'autonomies' which are governed not by liberal democratic norms but by customary indigenous 'norms, institutions, authorities and procedures' (Article 290)<sup>89</sup> – norms that 'tend to privilege collective identities and interests above those of individual community members'.<sup>90</sup> With a view to the new plurinational parliament, the Constitution establishes special electoral districts for indigenous minorities (Article 146/VII), a positive discrimination that is crucial to guarantee a certain ethnic representation of these peoples at the national level but obviously distorts proportional representation.<sup>91</sup> Furthermore, the recognition of indigenous languages leads the Constitution to oblige every civil servant to speak 'at least two official languages of the country' (Article 234/7).<sup>92</sup>

Particularly relevant, and contested, is the recognition of indigenous jurisdiction as a parallel system of justice on equal footing with ordinary state law (Article 179).<sup>93</sup> While being part of the establishment of non-electoral, communal forms of indigenous self-government that reduce the territorial and functional reach of the electoral regime (A) and, at the same time, limit the

<sup>88</sup> In line with the new emphasis on socio-economic rights, the Morales government has significantly expanded social policies. These include an increasing minimum wage, two conditional cash transfers – one ('Bono Juancito Pinto') for children if they continue education and one ('Bono Juana Azurduy') for pregnant women and young mothers if they seek medical care during and after pregnancy – as well as a universal state pension ('Renta Dignidad'). See Weisbrot, Ray and Johnston, 'Bolivia', pp. 15–6.

<sup>89</sup> See Franz Xavier Barrios Suvelza, 'La Autonomía Indígena Originaria Campesina en la Constitución Política del Estado', in Käss and Velásquez (eds.), *Reflexión crítica*, pp. 431–68. <sup>90</sup> Van Cott, 'Latin America's Indigenous Peoples', p. 138.

<sup>91</sup> Cordero, 'Nueva Constitución', p. 83. This distortion is, however, rather limited; see Choque, 'Participación y control social', p. 499. First, the constitutional revision by Congress restricted these special districts to indigenous peoples in rural areas who are a minority in their respective departments; see Böhr, 'Cuarenta días', p. 78. Second, the respective law (Ley del Régimen Electoral), like the transitional law approved in 2009, limited the number of these special seats in parliament to seven out of 130.

<sup>92</sup> Nonetheless, the transitional dispositions, added in the congressional agreement, clarify that this requirement is only to be 'progressively applied according to the law' (Article 159).

<sup>93</sup> See Carlos Derpic Salazar, 'La Justicia Comunitaria en la NCPE', in Käss and Velásquez (eds.), *Reflexión crítica*, pp. 477–516.

effective power of the liberal state and its institutions (E), most importantly this expansion of collective rights challenges individual civil rights. The Constitution clearly states that indigenous law has to respect 'the right to life, the right to defence and the other rights and guarantees established by the present constitution' (Article 190/II). Adding to these constitutional constraints,<sup>94</sup> the 2010 Law on Jurisdictional Delimitation explicitly limits 'the scope of applicability of indigenous law to cases where personal, territorial and material indigenous jurisdictions are simultaneously at work' and includes a 'long list of legal areas over which indigenous authorities have no jurisdiction', including corruption, rape and homicide.<sup>95</sup> These regulations tend to solve the most pressing liberal concerns<sup>96</sup> at the expense of the notion of an equal status of the two justice systems.<sup>97</sup> In general, however, they do not and cannot dissolve the fundamental tensions between the diverse practices of customary law and individual civil rights as defined in liberal terms. Legal pluralism challenges liberal conceptions of 'due process of law' and of 'a single system of law uniformly applied to all people'; customary practices that subordinate women clash with modern gender norms of equality; physical punishments 'may violate restrictions imposed by human rights norms'; and prioritising 'the good of the community as a whole' collides with the individualist conception of rights 'in western legal and moral systems'.<sup>98</sup> The new Tribunal Constitucional Plurinacional (Plurinational Constitutional Court), which includes representatives of the ordinary and the indigenous justice systems, is in charge of deciding conflicts between the indigenous and ordinary jurisdictions (Articles 196–7, 202).<sup>99</sup>

<sup>94</sup> Again, it was Congress that introduced crucial limitations to indigenous justice, most notably references to the 'right of defence', to the personal tie to an indigenous people as the basis of indigenous justice, and to a future Law on Jurisdictional Delimitation. See Böhr, 'Cuarenta días', pp. 80–2; and Hammond, 'Indigenous Community Justice', pp. 665–70.

<sup>95</sup> Anna Barrera, 'Turning Legal Pluralism into State-Sanctioned Law: Assessing the Implications of the New Constitutions and Laws in Bolivia and Ecuador', in Nolte and Schilling-Vacaflor (eds.), *New Constitutionalism in Latin America*, p. 374; see also Ley de Deslinde Jurisdiccional (Ley No. 073, 29 December 2010), <http://cedoin-gtz.padep.org.bo/upload/deslinde-jurisdiccional-ley.pdf>, Articles 8 and 10.

<sup>96</sup> Together with the prohibition of the death penalty, the mentioned restrictions imply, for example, that lynching – often (if misleadingly) discussed under the heading of 'community justice' (Hammond, 'Indigenous Community Justice', pp. 671–2) – can by no means be justified as an implementation of indigenous law.

<sup>97</sup> In this sense, Luis Tapia has argued that the new Constitution, while advancing significantly towards a recognition of 'political pluralism', has already established a 'constitutional hierarchy' that continues to privilege the model of modern (colonial) political institutions. Luis Tapia, 'El pluralismo político-jurídico en la nueva Constitución de Bolivia', in IDEA Internacional (ed.), *Miradas*, p. 263.

<sup>98</sup> Hammond, 'Indigenous Community Justice', pp. 677–80; see also Van Cott, 'Latin America's Indigenous Peoples', p. 139.

<sup>99</sup> See Barrera, 'Legal Pluralism', p. 378.



(D) The three classical branches of government (executive, legislature and judiciary) are separated, their division of labour and mutual controls institutionalised.<sup>100</sup> Yet, they are subject to increasing vertical control from below: in the case of the president and the new parliament, as seen, accountability by means of popular elections is broadened to include recall referenda, popular legislative initiatives and mechanisms of participation and social control. In the case of the judiciary, the top echelons of the judiciary are to be elected by popular vote as well.<sup>101</sup> This direct election of the highest courts, from a liberal perspective, endangers the nature of the judiciary as a rather apolitical, technical body, but proponents see it as the only way to reduce the influence of party politics on the nomination of judges.<sup>102</sup> Taking up the liberal concern, however, the Constitution limits this mechanism of vertical (majoritarian) control by reintroducing a 'classic' form of horizontal control: the national parliament pre-selects candidates by a two-thirds majority (Article 193–5). While this parliamentary pre-selection represents one of the various concessions to the opposition introduced by the old Congress in October 2008,<sup>103</sup> the two-thirds majority of the governing MAS in the new Plurinational Legislative Assembly meant that the opposition could not make use of this institutional control during the actual process of preparing the judicial elections and, correspondingly, criticised the selection of candidates as illegitimately politicised.<sup>104</sup> In general, given the overwhelming MAS majority in parliament, the legislature could not be expected to seriously control the executive, but this resulted from the broad support for the MAS and not from the new constitutional framework.

Adding to the direct democratic control of the judiciary by means of popular elections, the Constitution also increases the political influence on supposedly technical issues and bodies.<sup>105</sup> For instance, the Central Bank 'loses

<sup>100</sup> See Helena Argirakis Jordán, 'De Congreso a Asamblea Legislativa Plurinacional', in IDEA Internacional (ed.), *Miradas*, pp. 361–74; Idón Moisés Chivi Vargas, 'El Órgano Judicial', in IDEA Internacional (ed.), *Miradas*, pp. 409–22; Carlos Cordero Carraffa, 'La Asamblea Legislativa Plurinacional: estructura y organización', in Käss and Velásquez (eds.), *Reflexión crítica*, pp. 153–90; Eduardo Rodríguez Veltzé, 'El Órgano Judicial en la Nueva Constitución', in Käss and Velásquez (eds.), *Reflexión crítica*, pp. 235–65. That the electoral courts are upgraded to a fourth branch of the state – the 'Electoral Organ' – is unusual, but only goes to strengthen this picture of horizontal controls (Articles 109–40).

<sup>101</sup> This refers to the Plurinational Constitutional Court, the Tribunal Supremo de Justicia (Supreme Court of Justice), the Tribunal Agroambiental (Agri-Environmental Court) and the Consejo de la Magistratura (Judicial Council).

<sup>102</sup> Chivi Vargas, 'El Órgano Judicial', pp. 416–17.

<sup>103</sup> Böhr, 'Cuarenta días', p. 84.

<sup>104</sup> See 'Mayoría oficialista elige a los primeros 56 candidatos', *La Razón*, 14 July 2011.

<sup>105</sup> See Barrios, 'The Weakness of Excess'.

its previous level of independence'.<sup>106</sup> According to the Constitution, it is the executive 'in coordination with the Central Bank of Bolivia' that determines the aims of monetary and exchange rate policy (Article 326/I). In addition, social control over state administration and public services adds a decidedly non-technical mechanism of oversight from below to the usual horizontal control by state institutions such as the Procuraduría General del Estado (Attorney General's Office) or the Defensoría del Pueblo (Ombudsman's Office).

(E) According to the new Constitution, the democratically elected representatives are those that are entitled to govern. There are no veto powers or reserved policy domains. Also, the diverse amendments and modifications discussed above do not imply a departure from representative democracy as in the end they all remain firmly under the control of representative institutions.<sup>107</sup> However, the establishment of non-electoral, communal forms of indigenous self-government that reduce the territorial and functional reach of the electoral regime clearly limit the effective power of the liberal state and its institutions. Hence there is a fear that the recognition of indigenous self-determination, autonomy and self-government could lead to 'a gradual construction of political, parastatal and independent entities within the Bolivian state'.<sup>108</sup> Even if this seems exaggerated, as indigenous autonomies remain – as do departmental, regional and municipal autonomies – embedded in the overall national framework as regulated by the Constitution and the law,<sup>109</sup> the Constitution does imply a deliberate decision to grant particular indigenous communities the right to reserved domains governed not necessarily in accordance with principles of representative democracy and the liberal rule of law. The ongoing, selective and contradictory process of implementing indigenous autonomies evidences both institutional constraints and substantial progress.<sup>110</sup>

Furthermore, when compared to mainstream standards of liberal democracy, the Constitution does not merely increase the importance of plebiscitary mechanisms and elected institutions within the state, but also expands the democratic state's overall role in the economy. Under the new constitutional framework, neither the market economy nor private property rights are abolished, but they are qualified and become part of a plural

<sup>106</sup> Gonzalo Chávez Álvarez, 'Fetichismo constitucional', in IDEA Internacional (ed.), *Miradas*, p. 207.

<sup>107</sup> As we have seen, legislative initiatives by citizens must pass through parliament; the framework for 'participation and social control' is defined by law – that is, parliament – as are the limits of indigenous justice.

<sup>108</sup> Cordero, 'La Asamblea Legislativa Plurinacional', p. 166.

<sup>109</sup> See Tapia, 'El pluralismo político-jurídico', p. 263.

<sup>110</sup> See Zegada et al., *La democracia desde los márgenes*, pp. 175–98.

economy which is to include ‘communitarian, state, private and social cooperative’ forms of economic organisation (Article 306). These constitutional changes confirm and reinforce the turning away from neoliberal economic policies that has been pushed by the Morales government. Since assuming power, the MAS has ‘substantially reworked the relation between the state and market, making the state once again a primary actor in economic development’.<sup>111</sup> Public investment has increased, as has the state’s control of strategic sectors (hydrocarbons, mining, electricity and infrastructure) and the overall number of state-owned enterprises.<sup>112</sup>

### *Alternative Conceptual Frameworks*

To summarise, the post-liberal democracy framework leads us to see contemporary political change in Bolivia as a transformation of democracy that implies a complex rebalancing of democratic norms, priorities and mechanisms. If we analyse liberal democracy as a specific way of blending the contradictory democratic principles – sovereignty of the people vs. constitutionalism, majority rule vs. protection of minorities, real political equality vs. formal equality and individual freedom, representation vs. direct participation, individual equality vs. recognition of cultural differences<sup>113</sup> – then the search for post-liberal democracy can be interpreted as a process of readjusting and rebalancing these principles by strengthening the plebiscitary and participatory aspects of democracy as well as the economic, social and cultural dimensions of human rights. In this sense, the notion of a post-liberal democracy does indeed grasp the main patterns of these changes: the continuity of basic procedures and institutions of representative democracy combined with significant changes across the different liberal ‘qualifiers’ usually attached to liberal democracy that imply a deviation from the mainstream liberal democratic model. As will be argued in this section, such a perspective seems indeed better equipped than alternative frameworks to help us make sense of contemporary Bolivia’s emerging political regime.

Probably the most prominent alternative lens is populism.<sup>114</sup> An analytical perspective on populism that avoids simplistic and highly normative readings

<sup>111</sup> Postero, ‘The Struggle’, p. 62; see also Clayton Mendonça Cunha and Rodrigo Santaella Gonçalves, ‘The National Development Plan as a Political Economic Strategy in Evo Morales’s Bolivia: Accomplishments and Limitations’, *Latin American Perspectives*, 37: 4 (2010), pp. 177–96.

<sup>112</sup> See International Monetary Fund (IMF), *Bolivia – IMF Country Report 11/124* (Washington, DC: IMF, 2011).

<sup>113</sup> See Coppedge et al., ‘Conceptualising and Measuring Democracy’, p. 257.

<sup>114</sup> See De la Torre, ‘Radical Populism’, p. 384; Laserna, ‘Mire, la democracia boliviana’; Raúl L. Madrid, ‘The Rise of Ethnopolitism in Latin America’, *World Politics*, 60: 3 (2008), pp. 475–508; and Mayorga, ‘Sociedad civil’.

of populism as either 'a pathological political phenomenon' or 'the most authentic form of political representation',<sup>115</sup> and instead highlights 'the uneasy and ambiguous relations between populism and liberal democracy',<sup>116</sup> is well in line with the above observations. The Morales government has mobilised and politically incorporated segments of society that have traditionally been marginalised.<sup>117</sup> But in doing so, Morales and the MAS have systematically relied upon a 'claim to embody the people', on an expression of 'the people's will' outside institutional channels and on 'plebiscitary acclamation'. Thus, 'populist understandings of democracy as mass rallies and occupations of public spaces' are clearly important in contemporary Bolivia.<sup>118</sup>

Yet populism grasps only part of the patterns of what is here called an emerging post-liberal democracy in Bolivia; it misses some elements, and misrepresents others. First, there is clearly a certain anti-institutional bias in the rhetoric and practice of the Morales government and the MAS, but the process of constitutional reform was fundamentally institutionalist in its overall orientation.<sup>119</sup> While political participation by mobilisation and pressure on the street is a traditional phenomenon in Bolivian politics,<sup>120</sup> formally recognising plebiscitary and participatory mechanisms such as the 'revocation of mandates' or 'participation and social control' is a step towards institutionalising such informal phenomena as the protest-driven toppling of elected presidents and the direct negotiation between protestors and government. In addition, these new mechanisms are embedded in a predominantly representative regime.

Second, there is, in part, a dichotomous world view that contrasts the good people with the bad old elites, but neither the Constitution nor government rhetoric describes 'the people' as a unified entity. The notion of a fundamentally plural society is the very basis of the 'plurinational state'.<sup>121</sup> Third, while '[p]opulist personalization is based on an extreme personalization of politics', the importance of Evo Morales for the whole process of transformation does not imply that Bolivian politics can be reduced to him and him alone.<sup>122</sup> Both in conception and in practice, the self-proclaimed 'government of the social movements' is characterised by a broad spectrum

<sup>115</sup> Cristóbal Rovira Kaltwasser, 'The Ambivalence of Populism: Threat and Corrective for Democracy', *Democratization*, 19: 2 (2012), p. 1.

<sup>116</sup> De la Torre, 'Radical Populism', p. 384.

<sup>117</sup> Gamarra, 'Morales and Democracy', p. 134.

<sup>118</sup> De la Torre, 'Radical Populism', pp. 385, 388.

<sup>119</sup> On the Morales administration's anti-institutional bias, see Bertelsmann Stiftung, *BTI 2010: Bolivia Country Report*, pp. 11–12.

<sup>120</sup> See George Gray Molina, 'State–Society Relations in Bolivia: The Strength of Weakness', in Crabtree and Whitehead (eds.), *Unresolved Tensions*, pp. 109–24.

<sup>121</sup> See Santos, 'Enriquecer la democracia', pp. 27, 32.

<sup>122</sup> De la Torre, 'Radical Populism', p. 388.

of relatively autonomous social organisations that do not simply obey the leader but rather mobilise, negotiate and, if need be, openly fight for what they regard as their legitimate entitlements.<sup>123</sup> Contemporary Bolivia is clearly not a case of populist-type controlled inclusion and top-down mobilisation.

In sum, while we may characterise part of the style of politics employed by Morales as populist, it would clearly be misleading analytically to call the emerging political regime one of 'radical populism' or 'populist democracy'. The same argument applies to attempts to categorise Bolivia as an emerging 'participatory' or 'radical democracy'. In line with such visions of democratic change,<sup>124</sup> political change in Bolivia encompasses attempts to deepen democracy by adding participatory mechanisms to representative democracy. Yet, as Boaventura de Sousa Santos' notion of 'demo-diversity' makes clear, new mechanisms of participation constitute but one dimension in a complex articulation of different forms and conceptions of democracy.<sup>125</sup> Furthermore, as seen above, the importance and place of 'participatory democracy' in this overall setting is far from settled. Non-liberal mechanisms of direct and collective participation remain, so far, largely informal and are vulnerable to being instrumentalised by the government.

Another alternative conceptual framework would draw on the well-known strategy of defining what 'real' democracy ought to look like in order to then build diminished sub-types.<sup>126</sup> In this sense, Bolivia has been characterised as 'a defective – illiberal and also delegative – democracy'.<sup>127</sup> This particularly refers to violations of the rule of law and the separation of powers during the process of constitutional reforms. The features that define illiberal and delegative democracy – limited 'binding impact' of the rule of law on state actions and limited control of the government by the legislature and the judiciary – can be observed in contemporary Bolivia.<sup>128</sup> However, there are two crucial differences between the concept of 'defective' democracy and the post-liberal democracy framework developed above.

First, the notion of 'defective democracies' implies an explicit normative assessment: any deviation from liberal democratic principles is a flaw that needs correction. In addition, this leaves no conceptual room for assessing those dimensions of political change that may include advances towards

<sup>123</sup> See Kohl, 'Bolivia under Morales', p. 116; Mokrani, 'Análisis de coyuntura'; Laserna, 'Mire, la democracia boliviana', pp. 50–7; and Zegada et al., *La democracia desde los márgenes*, chap. 6.

<sup>124</sup> Postero, 'The Struggle', p. 75; Santos, 'Enriquecer la democracia', pp. 29–30; Van Cott, *Radical Democracy*, pp. 8–9. <sup>125</sup> Santos, 'Enriquecer la democracia', p. 29.

<sup>126</sup> David Collier and Steven Levitsky, 'Democracy with Adjectives: Conceptual Innovations in Comparative Research', *World Politics*, 49: 3 (1997), pp. 430–51.

<sup>127</sup> Bertelsmann Stiftung, *BTI 2010: Bolivia Country Report*, p. 2.

<sup>128</sup> Merkel, 'Embedded and Defective Democracies', p. 49–50.

more democracy, even if departing from the liberal democratic framework.<sup>129</sup> Second, this analytical perspective is based on a linear and ultimately teleological conception of political development. Dramatic changes in the shape of the political regime notwithstanding, Bolivia in both 2002 and 2008 was categorised as an illiberal democracy.<sup>130</sup> Thus, the illiberal and delegative facets of Bolivian democracy appear simply as continuity,<sup>131</sup> signalling a failure to overcome 'the practices of the past'.<sup>132</sup> This, again, may capture part of the story, but it loses sight of the fact that deviation from liberal principles can take quite different forms: it can consist in the perpetuation of authoritarian/illiberal legacies, in political innovations that challenge liberal qualifiers of democracy or, as in Bolivia, in complex combinations of both. The premise that the only democratic alternatives to 'diminished sub-types' are 'consolidated liberal democracies'<sup>133</sup> misses the contested nature of democracy that is clearly evidenced by contemporary political changes in Bolivia<sup>134</sup> and, more broadly, in Latin America.<sup>135</sup>

### *Conclusion*

Bolivia's political regime, as provided for by the new Constitution, is clearly democratic. It does not represent a break with liberal democracy, yet it does contain a series of elements that challenge and, in part, replace some of the substantial qualifiers usually attached to liberal democracy. In particular, expanded notions of political participation, vertical accountability and citizenship/human rights, while part of an overall constitutional framework that is dominated by representative institutions and preserves basic liberal rights, go beyond the liberal focus on electoral participation, horizontal accountability and civil and political citizenship/human rights. Even at the level of the constitutional text, however, this is only part of the story. Most notably, the Constitution's emphasis on popular participation and social control is countered by the adherence to a 'strongly presidentialist' system.<sup>136</sup> When looking at the actual patterns of Bolivian politics under Morales, such

<sup>129</sup> Barrios, 'The Weakness of Excess', p. 128; Gamarra, 'Morales and Democracy', pp. 134–5. In this sense, Whitehead has characterised contemporary Bolivia (like Ecuador and Venezuela) as a 'distributivist', 'participatory' and 'illiberal' democracy: see Laurence Whitehead, 'The Fading Regional Consensus on Democratic Convergence', in Domínguez and Shifter (eds.), *Constructing Democratic Governance*, pp. 32, 35.

<sup>130</sup> See Merkel, 'Embedded and Defective Democracies', p. 51; and Bertelsmann Stiftung, *BTI 2010: Bolivia Country Report* for 2002 and 2008 respectively.

<sup>131</sup> *Ibid.*, p. 2. <sup>132</sup> Gamarra, 'Morales and Democracy', p. 134.

<sup>133</sup> Merkel, 'Embedded and Defective Democracies', p. 33.

<sup>134</sup> Postero, 'The Struggle'.

<sup>135</sup> Whitehead, 'The Fading Regional Consensus'.

<sup>136</sup> Zegada et al., *La democracia desde los márgenes*, p. 124.



contradictions multiply. As we have seen, the promises of participatory innovation have yet to be realised; besides elections and referenda, actual participation by popular organisations remains largely informal and is shaped, at least in part, by attempts to co-opt and control social movements from above. At the same time, horizontal accountability continues to be weak. The result is a concentration of political power in the government, even if important formal and informal checks on executive power exist.

In general, there can be no doubt that serious discrepancies exist between the constitutional text and political reality. Given the far-reaching changes implied by Bolivia's Constitution, this general observation is almost self-evident. Yet, an important question both for the general debate about post-liberal democracy and for the particular future of Bolivian democracy concerns the nature of these discrepancies.<sup>137</sup> Are they transitory phenomena that are due to the incomplete implementation of the new Constitution? Do they represent contingent political practices that may be entrenched features of Bolivia's political culture or specific idiosyncrasies of the Morales government, but that are independent from the specific shape of the Constitution? Or are they intrinsic attributes of the post-liberal democracy as outlined by the Constitution?

Some of the issues raised in the empirical analysis above belong in the first and the second category, but not in the third. For example, the judiciary in Bolivia is traditionally weak and politicised and, for a certain time during the process of constitutional transition, the highest judicial authorities were largely suspended. In general, however, there is no reason why a system in which the population elects its highest judges following a pre-selection by parliament (with a two-thirds majority) should undermine judicial independence and/or increase the politicisation of the judiciary. As regards the new mechanisms of 'participation and social control', the wording in the Constitution is vague, and it will generally be difficult to find a working balance between the contradictory principles of direct participation and indirect representation. But the current problems discussed above are obviously due to a combination of pending regulation, persistent political practices that preceded Morales and a political strategy on the part of the MAS government.<sup>138</sup> Many of the difficulties in implementing a plurinational state that really respects indigenous rights as guaranteed in the new Constitution can be plausibly attributed to the fact that this task cannot be expected to be completed in a few years given the entrenched institutional and habitual features of the post-colonial state which continue also in the Constitution.<sup>139</sup> In addition, the

<sup>137</sup> I thank two of the anonymous reviewers for urging me to think about this point.

<sup>138</sup> See Zegada et al., *La democracia desde los márgenes*, chap. 6.

<sup>139</sup> See Tapia, 'El pluralismo político-jurídico'.

political will of the Morales government in this area is also increasingly questioned.

With a view to the concentration of power in the executive, however, the situation is different. While this problem is also far from new, the post-liberal setting established by the new Constitution does contain particular features that facilitate its continuity, if not intensification. As noted, the executive is now more constrained by plebiscitary mechanisms of vertical accountability than by the classic liberal mechanisms of horizontal accountability, although the latter generally remain in place. This means that as long as a president can count on majority support, he or she will be extraordinarily strong vis-à-vis the other branches of government and the opposition in particular. The broadening of plebiscitary mechanisms deliberately constrains the relative autonomy of representative institutions, favours majorities and facilitates populist-style governing that relies on directly appealing to the people. At the same time, the president in Bolivia's new constitutional setting is much more dependent on securing continuous popular support, and Bolivian society is far too organised autonomously to be simply controlled from above. The tension between popular participation and a centralising presidentialism is, in this sense, a systematic feature of post-liberal democracy as it is emerging in Bolivia. How this tension will play out, however, is not pre-defined but the result of shifting correlations of social forces.

This article has presented a conceptual framework that enables a systematic analysis of processes of political change towards post-liberal democracy. The Bolivia case study demonstrates that this framework is indeed analytically useful and that we do find evidence that points to an emerging post-liberal democracy in this country. To be sure, Bolivia is a very particular case and even here the analysis has revealed a series of limits to post-liberal innovations. In this sense, broader comparative work is clearly needed in order to answer the question about the extent to which different kinds of post-liberal *democracy* are emerging as alternatives to liberal democracy in Latin America. This, furthermore, is obviously related to another, equally unanswered question that has not been dealt with here – namely, the debate about contemporary changes in economic policies in Latin America and whether we are witnessing the emergence of post-neoliberal models of *development*.<sup>140</sup>

In any case, these are all largely descriptive questions. Once we have more systematic empirical knowledge about the different shapes of post-(neo)liberal changes, a logical next step would be to look into the causes behind these changes: what explains the common features and dynamics across countries as

<sup>140</sup> See Burdick, Oxhorn and Roberts (eds.), *Beyond Neoliberalism*; Macdonald and Ruckert (eds.), *Post-Neoliberalism*; and Rovira Kaltwasser, 'Toward Post-Neoliberalism', pp. 225–34.

well as the differences between them? When trying to account for the relatively strong trend towards, and the specific shape of, post-liberal democracy in Bolivia, likely candidates for such an explanation include: the extraordinary strength of grassroots mobilisation and the traditionally strong and diverse trade unions at the level of actors; the extent to which large parts of the population are shaped by indigenous identities and the legacy of the 1952 revolution at the level of ideas; and the political reforms of the 1990s that deepened decentralisation and popular participation and the role of the hydrocarbon sector in the economy at the level of political and economic opportunity structures.

The appeal of the post-liberal democracy framework is that it enables us to assess processes of democratic transformation without ‘interpreting them through worn out categories’ or ‘imputing to them utopias that might be far from the desires and actions of the main actors involved’.<sup>141</sup> Alternative concepts such as populism or defective democracy do the former, whilst notions of radical or participatory democracy tend towards the latter. Post-liberal democracy, in this sense, helps us avoid a narrow, linear perspective that judges political regimes only in terms of their ‘defects’ and ‘deficits’ as defined by a fixed and uniform understanding of what liberal democracy should look like. At the same time, it refrains from defining in substantial terms such a post-liberal alternative. By drawing on the Bolivian experience, this article has argued that such openness is analytically useful for assessing transformations of democracy given the contradictory, contested and uncertain character of such processes of political change. As I have argued, Bolivia’s new Constitution does not establish a specific post-liberal democracy, but constitutes only a general politico-institutional framework and an important normative reference that structures the ongoing struggle to construct some kind of post-liberal democracy in the country.

### *Spanish and Portuguese abstracts*

*Spanish abstract.* Los recientes cambios políticos a lo largo de América Latina que desafían las concepciones dominantes de la democracia liberal han llevado a especular sobre la posibilidad de que alguna forma de democracia postliberal esté emergiendo en la región. Hasta ahora, sin embargo, no ha habido una evaluación sistemática de tal propuesta o una concepción explícita de democracia postliberal. Este artículo llena este vacío al proporcionar un marco para analizar el cambio político en la dirección de la democracia postliberal, en Latinoamérica y otras partes, y pone a prueba la posibilidad de tal marco de referencia en un caso de estudio en Bolivia. Éste muestra que el concepto de democracia postliberal nos ayuda a entender las transformaciones contemporáneas de la democracia boliviana y que tiene ventajas comparativas sobre

<sup>141</sup> Escobar, ‘Latin America’, p. 3.

marcos conceptuales alternativos tales como el populismo radical y la democracia defectuosa, es decir iliberal o delegativa.

*Spanish keywords:* democracia, liberalismo, transformación política, cambio constitucional, Bolivia

*Portuguese abstract.* Recentes mudanças políticas na América Latina que desafiam conceitos estabelecidos de liberalismo democrático tem gerado especulações sobre a possibilidade de algum tipo de democracia pós-liberal surgir na região. Até o momento, no entanto, não houveram avaliações sistemáticas sobre essa previsão, tampouco uma definição clara de democracia pós-liberal. Este artigo preenche essa lacuna de pesquisa ao propor um modelo conceitual para a análise das mudanças em direção à democracia pós-liberal, na América Latina e além dela, testando a viabilidade desse modelo de análise utilizando o caso da Bolívia. O modelo mostra que o conceito de democracia pós-liberal nos ajuda a compreender as transformações atuais na democracia boliviana e apresenta vantagens quando comparado à outros modelos conceituais, como o populismo radical e a democracia deficiente, ou seja, não liberal ou delegatória.

*Portuguese keywords:* democracia, liberalismo, transformação política, mudança constitucional, Bolívia